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Dirty Little Secrets

Mapping State and Corporate Complicity in the Global Rendition System: The Case of the UK

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Abstract

Based on a comprehensive investigation into the nature and evolution of the global rendition system, this paper seeks to provide an account of the extent of British involvement in and knowledge of that system. It shows that UK authorities have been complicit in a wide range of human rights violations associated with rendition, secret detention and torture. Using Stanley Cohen's framework for explaining how states deny involvement in and knowledge of atrocities we demonstrate the various ways that the UK government sought to cover up both its knowledge of the system, and its role within it. The paper is also aimed at offering some insights into how we have undertaken the research into these highly secretive practices. The paper begins by setting out the key elements of the global rendition system. It then explains how each of those elements violates various human rights conventions before going on to examine the extent of British involvement, and the lengths the British government went to in denying both knowledge of the system and complicity in it.

Introduction¹

On 17 September 2001, President George W. Bush sent a 14-page memo to the Director of the CIA pertaining to the Presidential approval of 'clandestine intelligence activity' and an authorisation for the CIA's subsequent 'terrorist detention and interrogation program'. While the memo remains classified, the topic of the memo was disclosed in January 2007 when the CIA filed a declaration to the Courts insisting that it was too sensitive for release, following an attempt by the American Civil Liberties Union to obtain its release through Freedom of Information legislation. Within weeks of issuing the memo, President Bush issued an Executive Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism (Bush 2001). This Order provided the Department of Defense (DoD) with the authority to detain indefinitely any non-American in the world, in any place in the world, as long as they were determined by the US Government to pose a terrorist threat to US interests. Together with the September 2001 memo to the CIA, this Order laid the foundations for the development of a global system of rendition and secret detention, as well as the official military detentions in Afghanistan and Guantánamo Bay, Cuba.

As part of our wider research, we have sought to provide the most comprehensive account to date of the global rendition system, rolled out by the Bush administration. It has involved dozens of countries on 5 continents, over 100 aircraft, and hundreds of victims. Importantly, many elements of the system are still intact. As well as involving the torture of terror suspects, the global rendition system features a number of practices that are prohibited by international human rights and international humanitarian law, some of which, in and of themselves constitute a form of torture, such as prolonged arbitrary, incommunicado detention. It is our contention that by examining the wider architecture of the global rendition system, we gain greater insight into the extent and seriousness of British involvement in a wide range of human rights violations. Using Stanley Cohen's framework for explaining how states deny involvement in and knowledge of atrocities (Cohen 2001) we demonstrate the various ways that the UK government sought to cover up both its knowledge of the system, and its role within it. The paper is also aimed at offering some insights into how we have undertaken the research into these highly secretive practices. The paper begins by setting out the key elements of the global rendition system. It then explains how each of those elements violates various human rights conventions before going on to examine the extent of British involvement, and the lengths the British government went to in denying both knowledge of the system and complicity in it.

The Global Rendition System: Key Elements

Defining Rendition

Rendition is not a term defined by international law, and as such there are various understandings of what the term means. At the heart of all definitions, however, is the movement of detained persons across state boundaries in a manner which is outside of any legal framework, for example, legal extradition proceedings. Building on attempts that have been made to scope out various sub-categories of rendition, particularly the work of the UK Parliament's Intelligence and Security Committee (ISC 2007), we consider the following to be substantive types of rendition: rendition to

¹ The research for this paper was funded by a grant from the UK's Economic and Social Research Council, (RES-000-22-4417: The Globalisation of Rendition and Secret Detention). As part of the research we have produced The Rendition Project website, which provides access to our Rendition Flights Database and Interactive Map, as well as comprehensive analysis of the global rendition system, and access to hundreds of declassified documents and investigative reports released over the last ten years. See: www.therenditionproject.org.uk

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justice; military rendition; and extraordinary rendition. Rendition to justice involves the transfer of persons from one jurisdiction to another for the purposes of standing trial within an established and recognised legal system. This form of rendition was used by the US during the Reagan and Clinton administrations, usually to apprehend terror suspects and try them in the US, but was largely discontinued during the 'war on terror' as other forms of rendition expanded (Boys 2011; Satterthwaite and Fisher 2006). Military rendition involves the extra-judicial transfer of persons (detained in or related to a theatre of military operations) from one state to another, for the purposes of official military detention in a military facility. Those subjected to military rendition are not held in secret, although the legality of their capture, transfer and continued detention may be disputed. Their treatment, including interrogation methods employed, may also contravene international and domestic law. The transfer of hundreds of battlefield detainees from Afghanistan (and the Afghanistan-Pakistan border region) to Guantánamo Bay, via US Department of Defense-run facilities in Afghanistan, are instances of military rendition, as are the transfer of battlefield detainees from Iraq to detention facilities in other states. Extraordinary rendition refers to the extra-judicial transfer of persons from one jurisdiction or state to another, where this involves the capture and transfer outside of the recognised theatres of conflict in Iraq and Afghanistan, or where it otherwise involves transfer to secret detention outside of the normal legal system. Those subjected to extraordinary rendition include all those moved between states as part of the CIA's Counterterrorism Center Program, and held in CIA-run 'black sites', secret detention in DoD facilities, and proxy detention sites. It also includes those captured outside of Iraq and Afghanistan (including the Afghanistan-Pakistan border region) and transferred directly to official military detention in Guantánamo Bay, Iraq or Afghanistan.

The various logics behind 'extraordinary rendition' are firstly, to facilitate the secret detention of a terror suspect, and secondly, to exclude the possibility of review by the domestic courts of the US or the home country of the detainee. Through Bush's Executive Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism (Bush 2001), individuals detained under the Order, known as 'enemy combatants', need not be tried, but when they were to be, this should be by military commission. The Order also allowed for the detention of individuals at an appropriate location designated by the Secretary of Defense outside or within the US. It was this Order that paved the way for the arbitrary detention of thousands of detainees in Afghanistan and Iraq at sites intended for this purpose, including at the Bagram Airbase, Afghanistan, and the Abu Ghraib prison, Iraq, as well as for military rendition and extraordinary rendition (Bush 2001). The third reason for carrying out extraordinary rendition was that it was assumed that foreign agents might gain useful intelligence, through interrogations that involved torture, that could be passed back to US intelligence agents. A leaked memo from a special agent of the FBI, sent in November 2002, warned senior FBI staff that proposed 'enhanced interrogation techniques' for use against Guantánamo detainees would violate US law on torture. As Satterthwaite and Fisher explain, the memo makes clear that the purpose of rendition is to subject detainees to illegal interrogation techniques as a means of securing intelligence. It states, 'Detainee will be sent off GTMO [the US detention facility at Guantánamo Bay], either temporarily or permanently, to Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite intelligence'. The author of the FBI memo then warns that any such action would violate Article 18, §2340 [the criminal torture statute] of the US Code (Satterthwaite and Fisher 2006: 59). Despite this warning, rendition of detainees by the CIA to third countries known to use torture continued throughout the Bush presidency, even though the CIA Inspector General concluded in 2004 that the value of using torture was of negligible value in the quest for intelligence (Blakeley 2011; CIA 2004a). Furthermore, rendition to countries where torture is common has continued under the Obama administration. We think that between 150 and 200 people have been subjected to extraordinary rendition, and this was recently confirmed by research carried out by the Open Society Justice Initiative, which has attempted to identify all known victims

of extraordinary rendition (OSJI 2013). However, because of the secrecy of the practice, the numbers may be higher.

The rendition process

Typically, the CIA, working with the intelligence agencies of other states, would identify individuals it wished to apprehend and transfer to a third party state and would then facilitate the rendition. This would either be in response to intelligence it received from other states about particular individuals thought to be involved in terrorist organisations, or individuals that the CIA had itself identified. Arrangements would be made for a rendition team to travel to the location where an individual had been apprehended by local authorities, on board one of a fleet of civilian aircraft which were either owned by the CIA (via nominally independent shell companies), or were contracted out to the CIA by private companies. Sometimes, the CIA team would collect an individual or group of intelligence personnel from the countries to which the individual target would eventually be handed over, to assist with the pick-up.

Detainees in the 'war on terror' have been rendered between many states around the world. However, accounts of the rendition process itself, as recounted by the detainees, are consistent. The Marty investigation, launched by the Council of Europe to investigate the complicity of European states, found there to be an 'established *modus operandi* of rendition, put into practice by an elite, highly-trained and highly-disciplined group of CIA agents' (Marty 2006, 2007). Detainee accounts consistently mention that those conducting the transfer were dressed completely in black, with full face masks and black gloves. Most communication was conducted via hand signals. Prior to the transfer, detainees would be subjected to a 'preparation phase', or 'security check'. This was described to the Marty investigation by a CIA officer as a 'twenty minute takeout', designed to reduce the detainee to 'a state of almost total immobility and sensory deprivation'. Detainees would be stripped, often by having their clothes cut from their body. They would be gripped from all sides throughout the process, and often punched, kicked or shoved. When naked, they were photographed, and be subjected to a full cavity examination. Suppositories were often administered anally, before being dressed in a diaper and a tracksuit or boiler-suit (jump-suit). Detainees were then blindfolded, sometimes after having cotton wool taped to their eyes. Headphones or ear defenders were placed on their ears, sometimes with loud music played through them. Loose hoods were then placed over the head, which reached down over the shoulders. Hands and feet were shackled, and may then have been connected to other detainees. During transfer, detainees were generally chained to a stretcher, a mattress, or the floor of these aircraft, either spread-eagled or with their hands behind their backs. No toilet breaks were provided, with detainees required to defecate or urinate into their diapers.

Working closely with the UK legal action charity, Reprieve, and various other human rights organisations, we have compiled all available flight data in the public domain which relates to those aircraft suspected of involvement in the global network of rendition and secret detention. We now have a comprehensive dataset containing flight data relating to 121 US-registered civilian aircraft that have been the focus of inquiry by one or more inter-governmental, governmental or non-governmental bodies. It also contains records on some military flights into and out of Guantánamo Bay. It contains over 13,000 flight records relating to those aircraft. This dataset has helped us to closely analyse the infrastructure that supported the global rendition network, and to identify patterns in the way in which renditions occurred. The database can be accessed via an interactive map on the Rendition Project website.² Used alongside the investigative work of human rights litigators and investigators, this data is important in helping us gain a fuller picture of the

² Ruth Blakeley and Sam Raphael (2013), *The Rendition Project website*, <http://www.therenditionproject.org.uk/>

involvement of the various states that played a part, as well as the roles of the private companies from which aircraft were supplied and logistics facilitated. Our analysis of the flight data, alongside documentary analysis of the numerous human rights investigations undertaken by international, governmental and non-governmental organisations, has meant we are able to ascertain the levels of involvement of Britain in rendition, secret detention and torture. Before exploring British involvement, we will first outline how various elements of rendition violate international law.

Rendition, Secret Detention, Torture and International Law

We draw on academic work in the field of International Law, where a small number of scholars have examined the various ways in which rendition violates various international treaties and conventions on human rights (Parry 2005; Sadat 2007; Satterthwaite 2006; Satterthwaite and Fisher 2006; Satterthwaite 2007b, 2007a; Weissbrodt and Bergquist 2006). As these scholars have shown, the rendition and/or secret detention of a detainee necessarily entails multiple violations of their human rights, as codified in the national law of many states, as well as in international human rights law and international humanitarian law. Despite attempts by the Bush administration to legitimise these violations by carving out an extra-legal space within which the detainees could be held and interrogated, legal experts from around the world are overwhelmingly of the opinion that these practices are illegal. In some cases they may even constitute ‘war crimes’ and ‘crimes against humanity’. Specifically, extraordinary rendition and the accompanying detention in secret violate the following: the prohibition of arbitrary detention; the right to a fair trial; the prohibition of torture and cruel, inhuman and degrading treatment or punishment; and the prohibition of enforced disappearance.

Secret detention necessarily violates the rights to liberty and freedom from arbitrary detention guaranteed by Article 9 of the International Covenant on Civil and Political Rights (ICCPR). Paragraphs 1 and 4 are of particular relevance:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

(UN 1976)

The UN Working Group on Arbitrary Detention has identified three categories of arbitrary detention, and has concluded in a number of cases of rendition victims that their secret detention falls under Category 1, ‘Where there is no legal basis for the deprivation of liberty’, since they ‘had not been formally charged with any offence, informed of the duration of their custodial orders, brought before a judicial officer, allowed to name a lawyer to act on their behalf, nor otherwise been provided the possibility to challenge the legality of their detention’ (UN 2010: 15).

With regard to the right to a fair trial, where persons are held secretly without an intent to promptly charge with a crime, or to inform them of any charge, or to bring before an independent tribunal where guilt/innocence can be established, such practices violate Article 14 of the International Covenant on Civil and Political Rights (ICCPR), together with Article 9.

The rendition and illicit detention of terror suspects in the ‘War on Terror’ has led to the torture, cruel, inhuman and degrading treatment and punishment of many detainees, either while held and interrogated by the CIA or by US Department of Defense personnel, or by states acting for the US.

Secret detention has also been found to be a primary facilitator in the commission of acts of torture. In this context, the Human Rights Committee has stated that 'to guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognised as places of detention and for their names and places of detention, as well as names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned' (UN 1992).

The various violations of human rights that the global rendition system has involved have occurred despite the fact that the US and many of its partners in the global rendition system are signatories to the Geneva Conventions, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Torture and cruel, inhuman or degrading treatment or punishment are all prohibited under each of these Conventions. There is no derogation from this prohibition, even in times of war. Secret detention is itself a form of cruel, inhuman and degrading treatment or punishment, and even torture. The Human Rights Council have found many such cases to be in violation of Articles 7 and 10 of the ICCPR.

Every instance of secret detention is an instance of enforced disappearance, and this is explicitly outlawed by the International Convention for the Protection of All Persons from Enforced Disappearance (UN 2006). Article 7 makes the direct link, in law, between enforced disappearance and secret detention. When practiced on a systematic basis, enforced disappearance can amount to the most grave of crimes under international law: a 'crime against humanity'.

Complicity in rendition and secret detention may mean that states fall foul of international laws concerning *non-refoulement* and the requirement that states are in no way accessories to human rights violations. Indeed they have certain responsibilities to prevent those violations. For example, under the Convention Against Torture, states have obligations to try to prevent torture by other parties. The transfer of an individual to another state where there is a risk that the individual faces torture is prohibited. The Convention Against Torture explicitly states this in Article 3:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

(UN 1985)

While the ICCPR does not contain an explicit clause of non-refoulement, the UN's Human Rights Committee has interpreted Article 7 as including an obligation of non-refoulement. In its general comment_ on *The Nature of the General Legal Obligation on State Parties to the Covenant* in 2004, the Committee stated:

Moreover, the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.

(UN 2004)

The US has tried to get round the non-refoulement obligation by arguing that the ICCPR only applies to individuals within the US. Yet article 2 states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.

(UN 1976)

The US interprets this as meaning that individuals have to be within its territory and subject to its jurisdiction. This is at odds with the UN Human Rights Committee's interpretation, which sees the Covenant as being applicable to individuals either in the state's territory or subject to its jurisdiction. In other words, as Satterthwaite explains, there are two separate bases for the application of the norms (Satterthwaite 2007b). The first is the effective control over territory. The second is the existence of power over an individual. With regard to territory, the Human Rights Committee interprets this to mean not just the sovereign territory of a state, but also territory that is under 'effective control' of the state. This can include the territory of other states under military occupation, as well as territory where the state's forces are involved in a multilateral military operation. With regard to the existence of power over an individual, the Human Rights Committee finds that the Covenant applies to anyone who is abducted or arrested by a state's agents even if this occurs outside the state. Thus, even if the transfer of a detainee originated in territory that was not under US control, if US agents were involved, they would be in violation of the Covenant.

It is clear that rendition itself violates international human rights law, as do a number of the accompanying practices that have become key features of the global rendition system. The remainder of this paper is aimed at evaluating the extent to which Britain has colluded in the global rendition system and in doing so, has failed to meet its obligations to protect human rights.

Britain's role in the global rendition system

Britain has colluded in rendition in a number of ways, some of which have come to light only very recently. As such, the UK has violated numerous articles of international law aimed at protecting human rights. Collusion by Britain has taken a number of forms. UK authorities have passed questions to those involved in interrogations of individuals that have been subjected to rendition, secret detention and torture. UK authorities initiated renditions of individuals to Libya, which were then facilitated by the CIA and resulted in the arbitrary detention and torture of victims by Gaddafi's regime. UK territory has been used for the refuelling of aircraft involved in renditions. UK authorities have shared intelligence with the US and other states which has led to the rendition and secret detention of detainees. UK authorities have received intelligence obtained during the interrogation of individuals that have been subjected to rendition, secret detention and torture. UK intelligence agencies have been informed by detainees that they have been subjected to torture and have failed to act.

Denial Theory

Despite overwhelming evidence that the UK knew a great deal about the rendition programme, and that UK security and intelligence agencies were involved in it, UK authorities repeatedly denied knowledge of it and complicity in it. We draw on Cohen's framework for understanding the various mechanisms of denial that states use to cover up knowledge of and involvement in atrocities. Cohen distinguishes between the ways that the public responds to knowledge of atrocities and what he calls 'political denial'. When the public denies atrocities or suffering, the denial tends to be a psychological defence mechanism 'for coping with the guilt, anxiety or other disturbing emotions aroused by reality' (Cohen 2001: 5). When states deny atrocities or suffering, this tends, by contrast,

to be a deliberate exercise in disinformation, lying and cover up, which is 'cynical, calculated and transparent' (Cohen 2001: 6). Cohen suggests that authorities have three possibilities as to *what* is being denied, which he terms 'literal denial', 'interpretive denial', and 'implicatory denial' (Cohen 2001: 7).

Literal denial involves asserting that something did not happen or is not true (Cohen 2001: 7). It may also involve efforts to go on the counter-offensive by smearing those who allege wrong doing (Cohen 2001: 112-13). Interpretive denial involves giving a different meaning to the facts from what seems apparent to others, rather than stating outright that something is not true (Cohen 2001: 7). This might involve suggesting that an incident was isolated rather than systematic (Cohen 2001: 61). It might involve denying responsibility by claiming that an act was accidental (Cohen 2001: 60), or by suggesting that some other party is responsible (Cohen 2001: 61). It might involve euphemism (Cohen 2001: 107), for example, the Bush administration coined the term 'enhanced interrogation techniques' to describe what others would understand as torture. It might also involve recourse to legalism (Cohen 2001: 107), a device also used by the Bush administration, which sought to argue that the Geneva Conventions did not apply to detainees captured in the 'War on Terror', since they were 'enemy combatants' rather than prisoners of war. Finally, implicatory denial involves neither the denial of facts nor the interpretation of those facts. Rather it involves the denial or minimisation of the psychological, political or moral implications that conventionally follow from the events in question. This often involves the rationalisation of state actions (Cohen 2001: 8). For example, US officials in recent years have repeatedly argued that the indefinite detention without charge or trial of detainees in Guantánamo Bay is not as serious as opponents of the policy suggest, since the detainees in question are extremely dangerous, and therefore, the abuse of their human rights is minor issue compared with the risks they pose to US citizens if released. It might involve denial of the victim, perhaps by arguing that the injury to a victim was not wrong in the circumstances (Cohen 2001: 61). It might involve trying to 'neutralize the wrongfulness of the act by minimizing any resultant hurt or injury' (Cohen 2001: 61). It might also involve appeals to the righteousness of the actor or indeed the act, or to necessity (Cohen 2001: 110). It might also involve appeals to the exceptional nature of the circumstances, or it might involve making advantageous comparisons with other, less savoury actors (Cohen 2001: 111).

Denial is often a collective endeavour, involving group think, whereby a collective understanding of specific actions emerges (Cohen 2001: 66), and whereby mechanisms develop within organisations for insulating certain individuals or groups from knowledge of wrongdoing. These can include ensuring that knowledge is compartmentalised so that individuals do not have the full picture (Cohen 2001: 86). It can also involve ensuring that individuals conform, for example by not questioning when they discover wrongdoing (Cohen 2001: 91). Since political denial often involves quite complex webs of collusion, it can be difficult to ascertain who knew what, when. Unravelling knowledge of rendition within the UK state apparatus is no exception, as we will see.

UK authorities in denial

After evidence emerged that renditions related aircraft had landed on UK territory, UK authorities were repeatedly asked about British involvement in rendition and alleged complicity in torture. The UK government's typical response was to state that the UK unreservedly condemns torture or cruel, inhuman or degrading treatment, that it does not participate in it, solicit it, encourage or condone it, for any purpose, and claims to abide by its commitments under international law (JCHR 2009: Ev. 33-4). This repeated response is an obvious example of literal denial. UK officials also engaged in interpretive and implicatory denial. Numerous examples of this are seen in oral evidence given to the House of Commons Foreign Affairs Select Committee on 13 December 2005.

Jack Straw stated before the House of Commons Foreign Affairs Select Committee, 'We know of no occasion where there has been a rendition through UK territory, or indeed over UK territory, nor do we have any reason to believe that such flights have taken place without our knowledge' (UK 2005). This was a case of literal denial. He went further though, stating that, 'Unless we all start to believe in conspiracy theories and that the officials are lying, that I am lying, that behind this there is some kind of secret state which is in league with some dark forces in the United States, and also let me say, we believe that Secretary Rice is lying, there simply is no truth in the claims that the United Kingdom has been involved in rendition full stop, because we have not been' (UK 2005). Thus, as well as denying UK involvement in rendition, Jack Straw was quick to smear those making the allegations as 'conspiracy theorists'.

In the same session before the Foreign Affairs Select Committee, Straw also offered comments that suggest he was engaging in interpretive denial. For example, he admitted to having approved two requests from the Clinton administration to carry out two renditions to justice during his time as Home Secretary, stating that he had been satisfied about the nature of the likely treatment they would receive on arrival in the US. He was therefore admitting that renditions had occurred but was asserting that these were qualitatively different from what was being alleged, since these were renditions to justice, not to torture. He did not acknowledge that both are illegal under international law. By pointing to this very small number of cases, he was also implying that these had been isolated incidents and in no way linked to any systematic programme of UK complicity in rendition. As we will show, however, nine months before Straw gave his evidence to the Foreign Affairs Select Committee, UK security services were involved in orchestrating renditions to torture of a number of Libyans from the Far East to Gaddafi's regime.

Former Prime Minister Tony Blair continued to deny any UK involvement in rendition, long after leaving office, and after compelling evidence had proved the opposite to be true. As Gaskarth explains, in an interview in 2010, continued to claim not to know anything about rendition and torture, stating 'I'm not going to condemn something I really don't know about.' Yet, as Gaskarth shows, he was made aware of the allegations of torture against victims of rendition during his time in office, as early as February 2004 (Gaskarth 2011: 961).

We explore a number of specific cases to demonstrate the various ways in which the UK has been involved. We also demonstrate where denials by UK authorities have proven to be false, or where UK authorities knew full well that there was a risk of numerous human rights violations, but either actively encouraged a course of events that would result in those, or did nothing to stop them.

Renditions initiated by UK authorities

The UK has initiated renditions from Asia to Libya, as indicated by the so-called Tripoli documents. These were documents formerly held by the Libyan intelligence chief, Musa Kusa, and obtained by Human Rights Watch on 3 September 2011, just after the fall of the Gaddafi regime, and explained in detail in their report, *Delivered into Enemy Hands* (HRW 2012).

UK intelligence services appear to have initiated the rendition of Abdel Hakim Belhadj (also known as Abu Abdullah al-Sadiq) and his pregnant wife, Fatima Bouchar, from Bangkok to Libya, in early March 2004. Belhadj had left Libya in 1988 and during the 1990s became leader of the Libyan Islamic Fighting Group (LFIG), aimed at overthrowing Colonel Gaddafi's regime.

Throughout the 1990s, the LFIG was involved in an ongoing insurgency in Libya, although by 2001 this had been crushed and Belhadj was based in Afghanistan. After 9/11, Belhadj fled Afghanistan, marrying Fatima Bouchar in 2003 and settling first in Malaysia before moving to China. In early 2004, shortly after Fatima became pregnant, they suspected they were being monitored by the authorities, and decided they should seek asylum in the UK. On 21 February 2004 they were detained at Beijing airport, detained for a couple of days, and then deported back to Malaysia. Afraid of being deported to Libya, on arrival at Kuala Lumpur Belhadj claimed that he was an Iraqi refugee and wished to claim refugee status. The couple were then detained and interrogated in Kuala Lumpur for two weeks.

The Tripoli Documents show that British Security Services knew of their detention in Malaysia and arranged with the Libyan and American services to render Belhadj and Bouchar back to Libya. On 1 March, a week after the two had been sent to Malaysia, MI6 sent a fax to the office of al-Sadiq Karima, Head of Libyan International Relations Department, informing them of Belhadj's detention (MI6 2004b). The Americans also were clearly aware of Belhadj's whereabouts, perhaps tipped off by the British, and arranged for him and Bouchar to be rendered back to Libya. On 4 March, the CIA sent two memos to the Libyan security services. The first memo, *Urgent Request Regarding the Extradition of Abdullah al-Sadiq from Malaysia*, stated that the Americans were 'working energetically with the Malaysian government to effect the extradition of Abdullah al-Sadiq [Belhadj] from Malaysia', and that 'of course, once we have Sadiq in custody, we will be very happy to service your debriefing requirements and we will share the information with you' (CIA 2004f). The memo went on to request that the Libyans refrain from exerting pressure on the Malay authorities 'until we have custody of Sadiq'. The second memo from 4 March, *Clarification Regarding the Rendition of Abu Abdullah al-Sadiq*, made it clear that 'our service [the CIA] is committed to rendering the terrorist Abu Abdullah al-Sadiq to your custody', and that they were 'very hopeful for a (sic) expeditious resolution to this matter' (CIA 2004g).

Two follow-up memos were then sent from the CIA to Libyan intelligence on 6 March. The first, *Planning for the Capture and Rendition of Abdullah al-Sadiq*, informed the Libyans that the Malay authorities were planning to put Belhadj and Bouchar on a commercial flight from Kuala Lumpur to London via Bangkok the next day, on 7 March (CIA 2004e). It went on to state that 'we are planning to arrange to take control of the pair in Bangkok and place them on our aircraft for a flight to your country'. It also requested the presence of Libyan intelligence officers during the rendition (CIA 2004e). The second memo from 6 March, headed *Schedule for the Rendition of Abdullah al-Sadiq*, provided 'important information with regard to the upcoming rendition of LIFG leave Abdulla al-Sadiq and his wife to your custody' (CIA 2004d). The memo listed the flight plans for the rendition circuit, including for an overnight in the Seychelles for which the Libyan officers accompanying the American team were advised to 'have the proper documentation'. The flight plans also included a refuelling stopover in Diego Garcia on return from Thailand, with the detainees on board. The memo was clear that 'the US officers will exercise control over this operation until the detainees are remanded to your government in Tripoli', and that 'our regulations stipulate that your officers refrain from bringing weapons of any type, cameras, cell phones or recording devices on board the aircraft'.

The rendition of Belhadj and Bouchar appears to have followed the broad plan laid out in the CIA's memos to Libyan intelligence, although the precise dates may have varied. They were released from detention in Malaysia at some point in the first week of March, and told they could travel to the UK. The flight they were placed on, however, stopped in Bangkok on the way to London, and they were both detained again in the airport's waiting room. At that point, they were handed over to US agents and detained in what they believe was a secret prison in or near to the airport. The exact location of the facility is unclear. In legal papers filed against the British Government, Bouchar has testified that she was driven 'for about 30 minutes' in a truck to the prison (Day 2011). However, in an interview

with a Human Rights Watch researcher, Belhadj described his detention site as ‘a special room in the airport in Bangkok’ (HRW 2012), and according to an interview with *The Guardian*, they both arrived there ‘within minutes of being detained, suggesting that it was located within the perimeter of Don Muang international airport’ (Cobain 2012).

Regardless of the location of the detention site (or indeed sites), Belhadj and Bouchar were separated. Both detainees report being held, interrogated and tortured in Bangkok for five to six days. However, this appears to be inconsistent with, on the one hand, the 6 March CIA memo to Libyan intelligence which claimed that they were being moved from Malaysia to Thailand on 7 March (CIA 2004e) and, on the other hand, flight data for the aircraft which rendered the two from Thailand to Libya (which landed in Libya with the detainees on board at some point before or on 9 March). These flight movements would suggest a detention in Thailand of only 1-2 days. It may be that Belhadj and Bouchar were confused about the length of time they were kept in Thailand. Or, perhaps more likely, the CIA may have provided the Libyans with misinformation on 6 March, with Belhadj and Bouchar being moved several days earlier to allow for a longer period of American interrogation before being returned to Libya. Indeed, Belhadj has told Human Rights Watch that they were moved to Thailand on 3 March (HRW 2012).

On either 8 or 9 March, Belhadj and Bouchar were rendered to Libya. Analysis of flight data by Reprieve and the Rendition Project demonstrates that the couple were rendered on board the CIA-owned Boeing 737 with registration number N313P. Eurocontrol and Federal Aviation Administration data shows that this aircraft had flown from the US to Libya on 7 March, and was back in the country on 9 March, from where it continued onwards to conduct a second rendition (of Yunus Rahmatullah and Amanatullah Ali from Iraq to Afghanistan). The CIA memo headed *Schedule for the Rendition of Abdullah al-Sadiq*, both confirms the other sources of data and also provides details for the aircraft’s movements between 7-9 March. According to this memo, the aircraft picked up the detainees from Bangkok and departed at 23:30 GMT. It then flew to the British island of Diego Garcia, landing after four hours. At this stopover, the aircraft took on 10,000 gallons of fuel, before departing again at 05:30 GMT and landing in Tripoli 11 hours later.

On arrival in Tripoli, Belhadj and Bouchar were driven to Musa Kusa’s ‘external security’ prison in Tajoura (Kusa was Gaddafi’s Head of Libyan Intelligence). Bouchar was kept blindfolded and bound for several more hours on arrival at the prison. Within four days, her interrogations began, twice per day for 2-3 hours at a time. She was psychologically tortured and refused a medical examination for 2 months. The doctor explained that she and the baby were very weak and that her womb was too dry to allow proper movement for the baby. She was finally released on 21 June 2004, although was not permitted to leave the country, and gave birth to her son on 14 July (HRW 2012).

Belhadj remained in Tajoura for four years. He was tortured repeatedly, including beatings, sleep deprivation to the point of delirium, being hung from walls and subjected to psychological torture.³ He was held in solitary confinement, in a tiny dark cell, and refused permission to bathe for three years. Moreover, he says that he was interrogated by American and British agents, and those from other European countries. In an interview with *The Independent*, Belhadj described being interrogated by three British agents over two sessions (Sengupta 2011). The two men and a woman would question him for two hours at a time, and would focus on members of the LIFG based in the UK and their links with al Qaeda, which he denied. He describes trying to alert them to his torture at the hands of the Libyans:

I hoped they would do something about it. I was too terrified during the meeting to say out loud what was being done to me because I thought the Libyans were taping what

³ For details of Belhadj’s and Bouchar’s treatment and torture, see: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/abdel-hakim-belhadj-&-fatima-bouchar.html>

was going on. When the Libyan guards left I made sign movements with my hands. The British people nodded, showed they understood. They showed this understanding several times. But nothing changed, the torture continued for a long time afterwards.

The involvement of British and American intelligence in the interrogations of Belhadj is corroborated by the Tripoli Documents. Indeed, one of the 6 March memos discussing the upcoming rendition, headed *Planning for the Capture and Rendition of Abdullah al-Sadiq*, is clear that providing American access to the detainee was to be a quid pro quo for the CIA effecting his rendition, stating that 'we also appreciate your allowing our service direct access to al-Sadiq for debriefing purposes once he is in your custody' (CIA 2004e).

Once Belhadj and Bouchar were detained in Tajoura, the CIA sent two memos seeking to arrange access for American agents. One memo from the CIA to Libyan intelligence, undated and untitled, discusses a proposal for the two services to build on their 'nascent intelligence cooperation' by taking 'an additional step in cooperation with the establishment of a permanent CIA presence in Libya' (CIA 2004c). It also states that:

We are also eager to work with you in the questioning of the terrorist we recently rendered to your country. I would like to send to Libya an additional two officers, and I would appreciate if they could have direct access to question this individual. Should you agree, I would like to send these two officers to Libya on 25 March.

In a separate memo, dated 17 March and headed *Travel to Libya*, the CIA made arrangements for the two agents to travel to the country on 25 March to 'discuss the recent rendition' (CIA 2004b). Although the individual is not named in either memo, the dates discussed strongly suggest that they are referring to the rendition and interrogation of Belhadj.

Likewise, the Tripoli Documents include a memo from Mark Allen, who was then Director of Counterterrorism at MI6, to his counterpart in Libya, Musa Kusa (MI6 2004a). Dated 18 March, it primarily discusses the upcoming visit by Prime Minister Tony Blair to Libya. However, it also explicitly congratulates Kusa on the 'safe arrival' of Belhadj and discusses securing direct British access to the detainee's interrogations:

Most importantly, I congratulate you on the safe arrival of Abu Abd Allah Sadiq [Belhadj]. This was the least we could do for you and for Libya to demonstrate the remarkable relationship we have built over the years. I am so glad. I was grateful to you for helping the officer we sent out last week. Abu 'Abd Allah's information on the situation in this country is of urgent importance to us. Amusingly, we got a request from the Americans to channel requests for information from Abu 'Abd Allah through the Americans. I have no intention of doing any such thing. The intelligence on Abu 'Abd Allah was British. I know I did not pay for the air cargo. But I feel I have the right to deal with you direct on this and am very grateful for the help you are giving us.

As well as directly interrogating Belhadj, documents unearthed by *The Mail on Sunday* from the abandoned British Embassy in Tripoli and marked UK Secret include 'long lists of questions and background intelligence that MI5 and MI6 asked Libyan interrogators to put to Mr Belhadj during sessions where he claims he was being tortured' (Taher and Rose 2012).

After about four years in Tajoura, Belhadj was convicted in court for armed insurrection against the regime, in a trial where the only evidence allowed was a report from the Libyan security services, and where he did not have a chance to talk with a lawyer. Although he was sentenced to death, and

fully expected that this would be carried out, he was in fact transferred to the Abu Salim prison. Here he was held in isolation and in the dark, and continued to be beaten. When he agreed to participate in a 'de-radicalisation and reconciliation process', his conditions improved. He was finally released on 23 March 2010, six years after his initial capture.

In a case very similar to that of Belhadj and Bouchar, the Tripoli documents, as explained by Human Rights Watch, also show that MI6 initiated the rendition of Sami Mostefa al-Saadi, along with his wife and four children, from Hong Kong to Libya, via Bangkok, on or about 28 March 2004. In December 2012, having sued the UK government for MI6's involvement in his rendition, al-Saadi accepted £2.23 million from UK government in compensation in an out of court settlement. Nevertheless the UK government, despite making the settlement, refused to accept any liability. The settlement does raise important questions about what was known by senior government officials, what evidence there is of UK involvement, the extent to which that involvement was sanctioned at the very top of government, and whether the settlement was made to prevent evidence coming out through court proceedings.⁴

Use of UK territory for the refuelling of aircraft involved in renditions

Flight data obtained and analysed by Reprieve and the Rendition Project indicates that aircraft carrying rendition victims have made re-fuelling stops on the British island of Diego Garcia in the Indian Ocean. For example, Mohammed Saad Iqbal Madni was rendered from Jakarta, Indonesia to Egypt on 10-11 January 2002. He had been detained in Jakarta at the request of the CIA. He was transferred on board one of the CIA's own Gulfstream V jets, with the registration number N379P, and flown to Egypt where he was tortured for three months before being rendered again to Afghanistan, and then finally Guantánamo Bay. The aircraft stopped for refuelling en route between Indonesia and Egypt, landing on the British island of Diego Garcia with Madni on board. N379P left its home base of Johnston County Airport in the afternoon of 9 January, just several hours after Madni had been arrested in Jakarta. It flew first to Washington Dulles International Airport, where it stayed for just over an hour. It then flew direct to Cairo, landing in the middle of the night. The aircraft disappears from the flight records at this point, reappearing six days later on 15 January, where it leaves Cairo in the morning and flies to Glasgow Prestwick, Washington and then on to Johnston County, arriving just before midnight. Although there are no flight records documenting the whereabouts of N379P between 9-15 January, other evidence points to this aircraft having flown from Egypt (where it had landed to pick up Egyptian agents) to Indonesia in order to pick up Madni, before returning to Cairo with Madni on board, stopping off for fuel in Diego Garcia on the way. Madni has testified that he was put onto a plane in the evening of 10 January and taken to Egypt (Reprieve 2009). Indonesian officials speaking to the *Washington Post* (Chandrasekaran and Finn 2002) have stated that this aircraft was a Gulfstream V jet, matching the description of N379P.

After 5-7 hours in the air, the aircraft stopped for 30 minutes, during which time he was photographed but kept on the plane. It then took off again, flying for a further 3-4 hours before landing in Cairo in the morning of 11 January. Analysis conducted by Reprieve has demonstrated that the stopover location was almost certainly Diego Garcia (Reprieve 2009). This matches with the flying times provided by Madni, the distances involved, and the known speed of a Gulfstream V. It is also confirmed by a letter from then UK Foreign Secretary David Miliband to Reprieve's Director Clive Stafford Smith in February 2008, where he admitted that a 'plane with a detainee on board had refuelled in Diego Garcia in January 2002 (Miliband 2008). There is no other known detainee

⁴ For our detailed analysis of the case, see: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/sami-al-saadi.html>

transfer at that time whose route would have taken them via Diego Garcia, meaning that it is highly likely that the detainee in question was Madni.

Once N379P landed in Cairo on 11 January, it stayed on the ground until for four days before heading back to the US. Madni himself has testified that masked men were present during a series of long interrogations by Egyptian agents on 11-12 January. These masked men did not speak, but passed notes with questions to the Egyptians. It is therefore possible that these men were part of the renditions team who had transferred Madni to Egypt, and who left the country on board N379P on 15 January.

Later that year, the same aircraft flew completed a circuit that made several stops on the way, undertaking multiple renditions to transfer detainees between several destinations, including Diego Garcia. Specifically, it is likely to have rendered Ramzi Binalshibh from Afghanistan to continued CIA detention in Morocco, and two other detainees – Hassan bin Attash and Abu Otaibi Hadarami – from Afghanistan to proxy detention in Jordan. This circuit is also likely to have involved the rendition of a detainee from Southeast Asia to Egypt, via Diego Garcia. N379P left its home base of Johnston County Airport in the evening of 11 September 2002, the same day that Ramzi Binalshibh and Hassan bin Attash were captured in Karachi, Pakistan. After stopping for about 90 minutes in Washington Dulles International Airport, the aircraft flew to Athens, Greece, arriving early in the morning of 12 September. It then stayed in Athens for 24 hours, potentially awaiting instruction as the handover of Binalshibh and bin Attash to the CIA was being negotiated.

In the morning of 13 September, instead of heading eastwards towards Afghanistan or Pakistan, it flew southeast, direct to Diego Garcia, arriving in the late afternoon. At that point, the aircraft disappears from known records, only to reappear two days later, on 15 September, heading from Cairo, Egypt to Rabat, Morocco. Where the aircraft flew between Diego Garcia and Cairo is unknown, although it is the only rendition-linked aircraft with known movement through Diego Garcia in September 2002. This is significant, as the British Government has admitted that a rendition flight with a detainee on board stopped over for refuelling on the island during September 2002 (Milliband 2008). Given that it is unlikely that the aircraft was carrying a detainee from Athens to Diego Garcia, it is likely that it proceeded onwards from the island, picked up a detainee, and returned via Diego Garcia to North Africa.

Given the geographical location of the island, this is logical stopover for renditions from Southeast Asia to North Africa (whereas a stopover from Pakistan, Afghanistan or the Middle East en route to North Africa does not make sense). As such, it is likely that the first rendition in this circuit was of a detainee being transferred from Southeast Asia to Egypt. It is also likely, given the CIA's statement (CIA 2008) that one of the renditions through Diego Garcia was of a detainee being 'returned to his home country', that the detainee was Egyptian.

Once in Egypt, N379P flew to Morocco on 15 September, and then onto Porto, Portugal (LPPR) on the same day. The aircraft stayed overnight in Porto, likely for the rendition crew to get some 'rest and relaxation' before their second successive rendition flight. On 17 September, the aircraft flew direct to Kabul, Afghanistan. Here, it picked up Binalshibh and Hassan bin Attash, both of whom had been transferred from Karachi to the Dark Prison in Kabul on 14 September. According to Amnesty International, bin Attash has told his lawyers that he was rendered from Afghanistan to Jordan in September 2002 alongside another detainee, Abu Otaibi Hadarami (AI 2006). N379P then flew from Kabul to Amman, Jordan, presumably with all three detainees on board.

In Jordan, both bin Attash and Hadarami were transferred to GID detention, where they were tortured and interrogated for 16 months and 12 months respectively (AI 2006). There are conflicting accounts of Binalshibh's fate at this point. One former detainee in Jordan has told Human

Rights Watch that he was held next to Binalshibh in the GID facility in Amman during late 2002, where Binalshibh had discussed being tortured by the Jordanians (HRW 2008). This would suggest that Binalshibh was taken off N379P along with bin Attash and Hadarami. However, authoritative research by the AP's Adam Goldman has Binalshibh being taken from Kabul to all the way to Rabat on 17 September 2002, where he was held for six months before being transferred again, to Poland (Goldman 2007).

N379P left Jordan in the evening of 17 September, flying to Rabat, Morocco, probably with Binalshibh on board. Having completed all of its renditions, the aircraft then flew to Shannon, Ireland on 18 September, and then back to Johnston County via Washington on 19 September, landing in the early evening.

Although UK authorities repeatedly denied that UK territory had been used during CIA renditions, once flight records were obtained and analysed, the UK was forced to admit that UK territory had been used. On-going analysis of the flight data may well prove that UK territory has been used for renditions much more frequently than on the two occasions admitted by the UK government.

Sharing of intelligence with the US and other states which has led to the rendition and secret detention of detainees

As well as allowing the use of its territory for rendition flights, the UK has shared intelligence with the CIA and other states which has then be used as the basis for renditions. One such case is that of Bisher al-Rawi and Jamil el-Banna, UK residents who were arrested by Gambian authorities on arrival in Banjul, detained and interrogated by US agents in the country, and then rendered to Afghanistan before being transferred on to Guantánamo Bay. Jamil el-Banna is a Jordanian-Palestinian with refugee status in the UK. Bisher al-Rawi is an Iraqi national who had been living in the UK since 1984, following the detention and torture of his father by Saddam Hussein's secret police. He obtained British residency in 1985, and had indefinite leave to remain in the UK.

During the 1990s, al-Rawi formed a friendship the Muslim cleric Abu Qatada, now known for being an outspoken man suspected of involvement with al Qaida. In 1996, al-Rawi was asked by Qatada to assist him as an interpreter at a meeting with British officials (al-Rawi assumes they were members of the police or intelligence services). In subsequent years he was called upon to act as a translator on an informal basis for British intelligence services. After 9/11 this relationship intensified, and al-Rawi became the channel of communication between MI5 and Qatada. However, relations between al-Rawi and the Agency became increasingly strained, and ended just a few months before British authorities arrested Qatada in October 2002.

On 1 November 2002, al-Rawi, el-Banna and a mutual friend Abdullah El Janoudi travelled together to Gatwick Airport on a business trip to meet Bisher's brother, Wahab al-Rawi, in The Gambia. Together with another friend, Omar Omeri, the men had set up a joint venture to start a peanut-oil processing factory in The Gambia. However, the three men were arrested at the airport and detained under the Terrorism Act 2000. They were interrogated for four days at Paddington Police Station, with the ostensible reason for their arrest being the discovery of a 'suspect electronic device' in al-Rawi's luggage. Indeed, classified UK Government documents released into the public realm during the civil case brought against Jeppesen Dataplan in 2006⁵ include a telegram sent by

⁵ The case, on behalf of al-Rawi and several other plaintiffs, including Binyam Mohamed, was aimed at securing damages from Jeppesen Dataplan for its complicity in the rendition and torture of the plaintiffs, since Jeppesen had providing flight planning services for the aircraft involved in their renditions. Ultimately, however, the case itself was not heard in court, after the US Government intervened, asserting 'state secrets privilege' and claiming that the litigation would damage national security interests.

MI5 to the CIA, dated 1 November 2002 (MI5 2002b). This stated that al-Rawi was an 'Islamic extremist', and that the police had recovered 'some form of home-made electronic device. Preliminary inquiries including X-ray suggest that it may be a timing device or could possibly be used as some part of a car-based Improvised Electronic Device'. However, the British Security Services had clearly been following the men beforehand: six days earlier, on his way to The Gambia, Wahab al-Rawi had been stopped and extensively questioned about the new business, and about Abu Qatada. Moreover, the luggage search was conducted covertly, authorised by a warrant signed by the Home Secretary.

On or about 4 November, after four days of questioning, the men were released. The battery charger, which had apparently precipitated the arrest, was returned to al-Rawi. It was clear at this point that the device had been assessed as harmless; a position confirmed in a telegram from MI5 to MI6 and the Foreign and Commonwealth Office on 11 November, which stated that it was 'a commercially available battery charger that had been modified by Bisher al-Rawi in order to make it more powerful' (MI5 2002a). However, this assessment was not passed onto the CIA. Instead, on 4 November MI5 sent a telegram headed *Travellers to Gambia*, which asked the CIA to pass on the men's travel plans to the Gambian intelligence service, and to communicate the Gambians' reaction back to MI5 (MI5 2002c). Specifically, the telegram stated that 'We would be grateful for feedback on the reaction of the Gambians to this intelligence. In particular, we would be interested to learn if they are able to cover these individuals whilst they are in Gambia'.

On 8 November, the day that the three men attempted to travel to The Gambia for a second time (this time successfully), MI5 sent another telegram to the CIA. This one, headed *Individuals Travelling to Gambia*, provided the exact flight details, including the flight number and delayed take-off time, and the names and dates of birth under which the three men were travelling (MI5 2002d). Significantly, unlike the previous telegrams, this one did not include the caveat that the intelligence provided was 'for research and analysis purposes only and may not be used as the basis for overt, covert or executive action'.

As soon as al-Rawi, el-Banna and El Janoudi arrived in Banjul, Gambia, they were arrested by Gambian agents, along with Wahab al-Rawi and Omar Omeri, who had come to meet them at the airport. According to the 2007 Intelligence and Security Committee (ISC) report on Rendition (ISC 2007), there is no evidence that British intelligence intended the men to be arrested:

It seems to us that there are a number of possible reasons why the men were initially arrested. It is possible that the Gambian police or border authorities at Banjul airport decided to search the men based on a "hunch" – something that happens routinely at customs and immigration points around the world. It is also possible that the Gambians broke the caveats on the intelligence shared with them [the heading 'for research and analysis purposes only'] and chose to take executive action. Another possibility is that the US authorities neglected to pass on the caveats or instigated the men's arrest themselves. Whatever the reason for the men's arrest, it is clear that it was not at the instigation of the Security Service.

Indeed, MI5 claim that they were only informed of the arrest on 10 November. The following day, they sent a telegram, headed *Individuals Detained in Gambia*, to MI6 and the Foreign and Commonwealth Office (MI5 2002a). This set out some background information on the men, and stated that the Service was 'receiving updates from [REDACTED] regarding these detainees. We will forward any further relevant information in due course'. The five men were initially taken to the Gambian National Intelligence Agency (GNIA) Headquarters. They were questioned for two hours by Gambian officials. The next morning, two Americans arrived and interrogated and photographed

each of the men. They remained at this location for two days before being transported to what their captors referred to as a 'safe house'. Al-Rawi and El Janoudi were then returned to the GNIA headquarters, and before all four were transported to a second 'safe house'. There they were held in separate holding cells which were very small and without windows. The second safe house was controlled by Americans, and they were interrogated by both Americans and Gambians.

Omeri was released relatively quickly, while El Janoudi was kept for 26 days and Wahab al-Rawi for 27 days. After a further two days, and despite habeas corpus proceedings pending in the Gambian courts, al-Rawi and el-Banna were driven to the airport at Banjul. Flight data and associated documentation demonstrate that al-Rawi and el-Banna were rendered from The Gambia to Afghanistan on 8-9 December, via refuelling stopover in Egypt, on board the CIA-owned Gulfstream V jet with registration number N379P. Flight planning services were provided by Jeppesen Dataplan, a subsidiary of Boeing Inc. which arranged the logistical details for numerous CIA rendition flights.

The UK's Intelligence and Security Committee reported in 2007 that the CIA had told MI5 in late November that they intended to carry out a 'rendition to detention' operation to transfer the detainees to Bagram Airbase in Afghanistan (ISC 2007). According to the report, the Security Service 'registered strong concerns, both orally and in writing, at this suggestion and alerted the FCO'. In response to these representations, as well as several made at the diplomatic level, the Americans declined to give the precise location of the detainees, saying only that there were good grounds for their detention and that they were being treated well.⁶

The presence of British intelligence agents and/or their participation in interrogations of victims who report torture, and the failure of those agents to act

The case of Binyam Mohamed al-Habashi best illustrates the various ways in which UK intelligence agents have been present and participated in the interrogation of individuals that have been subjected to rendition, secret detention and torture, and have known that individuals have been tortured and have failed to act. Mohamed is an Ethiopian national who had been legally resident in the UK since 1994. He had travelled to Afghanistan in the summer of 2001, supposedly in an attempt to overcome a drug addiction. On 10 April 2002, he was arrested in Karachi Airport, Pakistan, while attempting to return to the UK.

Pakistani immigration officers detained Mohamed at Karachi Airport for three days. On 13 April, he was transferred to Landi Prison, run by Pakistani prison officials, and held there for seven days. He was not interrogated or tortured in Landi. On 20 April, Mohamed was transferred to an interrogation centre run by Pakistani intelligence services (ICI) in Karachi, and was held there for three months. At this location he was held in a cell 2m x 2.5m, and hung from the ceiling for a week in the 'strappado' position (where the detainee's feet barely touch the ground). While in the ICI facility, Mohamed was interrogated by four FBI agents, three of whom were identified as 'Chuck', 'Terry' and 'Jenny'. During their interrogations of Mohamed, they threatened him with torture by foreign security forces. According to a declassified version of Mohamed's testimony to his lawyer, Clive Stafford Smith (provided in August 2005 when Mohamed was still in Guantánamo Bay), the interrogator 'Chuck' threatened: 'If you don't talk to me, you're going to Jordan. We can't do what we want here, the Pakistanis can't do exactly what we want them to. The Arabs will deal with you'. 'Terry' also threatened him with transfer to Israel or Jordan, and even to the British: 'The SAS know how to deal with people like you' (Stafford-Smith 2005).

⁶ For more information about the rest of their journey through the global rendition system, see: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/bisher-al-rawi-&-jamil-el-banna.html>

When the Americans were not present, Mohamed was beaten repeatedly with a leather strap. At one point, a Pakistani pressed a gun into his chest and waited: 'I knew I was going to die. He stood like that for five minutes. I looked into his eyes, and I saw my own fear reflected there. I had time to think about it. Maybe he will pull the trigger and I will not die, but be paralyzed. There was enough time to think the possibilities through.' After that incident, 'Chuck' came into the room, said nothing, but just stared at Mohamed.

Mohamed claims that he was also interrogated by two MI6 officers, one of whom identified as 'John'. According to Mohamed:

They gave me a cup of tea with a lot of sugar in it. I initially only took one. 'No, you need a lot more. Where you're going, you need a lot of sugar.' I didn't know exactly what he meant by this, but I figured he meant some poor country in Arabia. One of them did tell me I was going to get tortured by the Arabs.

According to a heavily-redacted report from the UK's Intelligence and Security Committee published in July 2007, MI6 had testified behind closed doors that it had had no contact with Mohamed at any point (ISC 2007). MI5, however, did admit that one of its officers interrogated him while in Karachi, but 'denies that the officer told al-Habashi [Mohamed] he would be tortured'. In subsequent investigations regarding UK complicity in Mohamed's torture, that officer became known as Witness B. According to testimony heard by the Committee, 'the officer [Witness B] reported that he did not observe any abuse and that no instances of abuse were mentioned by al-Habashi'.

However, court documents since released demonstrate that MI5 in general – and almost certainly Witness B in particular – were aware of Mohamed's mistreatment by the US in Pakistan, *before* Witness B travelled to Pakistan to interrogate him. This, Mohamed's lawyers have argued, amounts to British complicity in his mistreatment. A summary of the 42 classified CIA documents handed to MI5 regarding Mohamed's treatment was included in a High Court decision concerning *Binyam Mohamed v Secretary of State* in August 2008 (UK 2009). However, this section of the decision – which ran to seven short paragraphs – was redacted from the open judgement on request by the Foreign Secretary, citing national security concerns. Further legal action eventually saw the decision to redacted these findings overturned, and in February 2010 the paragraphs were released as an annex to a judgement by the Court of Appeal which dismissed an attempt by the Foreign Secretary to keep them classified (UK 2010). They read:

It was reported [to the Court] that a new series of interviews was conducted by the United States authorities prior to 17 May 2002 as part of a new strategy designed by an expert interviewer.

v) It was reported that at some stage during that further interview process by the United States authorities, BM [Mohamed] had been intentionally subjected to continuous sleep deprivation. The effects of the sleep deprivation were carefully observed.

vi) It was reported that combined with the sleep deprivation, threats and inducements were made to him. His fears of being removed from United States custody and "disappearing" were played upon

vii) It was reported that the stress brought about by these deliberate tactics was increased by him being shackled in his interviews

viii) It was clear not only from the reports of the content of the interviews but also from the report that he was being kept under self-harm observation, that the interviews were having a marked effect upon him and causing him significant mental stress and suffering

ix) We regret to have to conclude that the reports provided to the SyS [security services] made clear to anyone reading them that BM was being subjected to the treatment that we have described and the effect upon him of that intentional treatment

x) The treatment reported, if had been administered on behalf of the United Kingdom, would clearly have been in breach of the undertakings given by the United Kingdom in 1972. Although it is not necessary for us to categorise the treatment reported, it could readily be contended to be at the very least cruel, inhuman and degrading treatment by the United States authorities.

It should come as no surprise that the foreign secretary sought to suppress this evidence, given that when questioned by the Foreign Affairs Select Committee in December 2005, he had categorically denied that the UK intelligence officer who saw Mohamed had observed any abuse (UK 2005). Straw's claim proved to be untrue. What is not clear is whether his denial was a lie, and he knew what the reports to the Security Services contained, or whether Straw himself had been misled by the Security Services. This illustrates the challenges of unpicking who knew what and when in cases where organisations of the state are colluding in denial.

On 19 July, after three months in the ICI facility, Mohamed was transferred by air to Islamabad, on board a civilian flight. On landing, he was transferred to a cell at a Special Branch facility until the evening of 21 July. At about 10pm that evening, he was taken to what he describes as a military airport in Islamabad with two other detainees. This is likely to have been the Pakistani Air Force base at Nur Khan / Chakala, which is co-located with Islamabad's Benazir Bhutto International Airport. There he was turned over to the Americans, and subjected to the CIA's standard procedures for carrying out a rendition. He was stripped naked, photographed, searched, had a suppository inserted into his anus, and was then dressed in a tracksuit, shackled, blindfolded, had ear defenders placed over his head, and was strapped to the seat of an aircraft. Flight data and associated documentation demonstrate that Mohamed and the two other detainees were transferred on board the CIA-owned Gulfstream V jet with registration number N379P. The aircraft departed Pakistan in the evening of 21 July, and flew direct to Rabat, in Morocco, arriving in the early hours of 22 July.

For 18 months, between 22 July 2002 and 21 January 2004, Binyam Mohamed was held and tortured in Morocco.⁷ According to Mohamed, the questions asked during his interrogations in Morocco could only have come from British Security Services. Indeed, the investigation by the UK's Intelligence and Security Committee, published in heavily-redacted form in July 2007, included testimony from the Security Services stating that, other than Witness B in Pakistan, no other British agent had contact with Mohamed during his secret detention, and that UK intelligence was unaware that he had been transferred to Morocco (ISC 2007). However, it did conclude that 'there is a reasonable probability that intelligence passed to the Americans was used in al-Habashi's subsequent interrogation'.

In the evening of 21 January 2004, Binyam Mohamed was handed over to the Americans and subjected to the CIA's standard rendition procedures. He was then transferred on board the CIA-owned Boeing 737 with tail number N313P, and flown direct to Kabul, Afghanistan. Once in Afghanistan, Mohamed was placed in a truck and driven to the 'Dark Prison', a secret CIA prison just outside Kabul. He was held here for about four months, until late May 2004, and subjected to repeated interrogations and torture by the CIA.

In May 2004, Binyam Mohamed was transferred by helicopter with other detainees, 'tied like hens going for slaughter', on a flight lasting 20-30 minutes. He was blindfolded and had head phones placed over his head for the duration of the flight. Three of the detainees held in the Dark Prison

⁷ For a detailed account of Binyam Mohammed's journey through the global rendition system, including details of the rendition flights that transported him, and the torture he suffered, see: <http://www.therenditionproject.org.uk/global-rendition/the-detainees/binyam-mohamed.html>

with Binyam Mohamed – al-Sharqawi, bin Attash and al-Kazimi – were also transferred from Bagram Airbase to Guantánamo Bay with him in September 2004. This suggests that these were at least some of the men transferred alongside Mohamed in May 2004.

From May to September 2004, Binyam Mohamed was held at Bagram, and describes being subjected to further interrogations and being forced to sign a confession. On 19 September 2004, Binyam Mohamed was flown with eight other detainees - including bin Attash, al-Sharqawi and al-Kazimi - to Guantánamo Bay on a US military aircraft with call-sign RCH948y. While held in Guantánamo, Binyam Mohammed continued to suffer mistreatment in the forms of beatings and denial of medical care. Binyam Mohamed was finally released from Guantánamo Bay, back to the UK on 23 February 2009.

Conclusion

The UK government has repeatedly claimed that it unreservedly condemns torture or other cruel, inhuman and degrading treatment and punishment, and that it in no ways condones or facilitates its use. It also repeatedly used various denial devices to cover up both its involvement and its knowledge of the wider workings of the global rendition system. Yet through an analysis of that system, largely illuminated by mining the flight data relating to those aircraft involved in rendition, alongside the testimony gathered by human rights organisations and investigative journalism, the evidence shows that the UK has been involved in a whole raft of rendition-related activities that violate numerous obligations under international human rights law. The evidence also shows that the UK has played an active role in orchestrating and facilitating renditions to countries where it knew there was a risk of torture, that it has actively participated in intelligence sharing which has led to renditions to torture, that it has encouraged intelligence agencies in other states in using torture, by using them as a conduit for its own intelligence gathering activities, and that it has repeatedly turned a blind eye when it has witnessed torture or the effects of torture on detainees, or when it has been explicitly told that torture took place. Many of these things were going on well before UK officials deployed various techniques to deny UK involvement. Finally, the UK has repeatedly failed to report cases of torture and other cruel, inhuman and degrading treatment or punishment to the appropriate authorities, despite obligations to do so under international law. Proving that UK agents actively participated in interrogations that involved torture is almost impossible. But by examining its role in the wider architecture of the global rendition system, it is much easier to mount a compelling case of UK complicity, complicity that went much further than previously assumed.

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